Nos. 09-1454 and 09-1478

In The Supreme Court of the United States

BOB CAMRETA, PETITIONER,

v.

SARAH GREENE, PERSONALLY AND AS NEXT FRIEND FOR S.G., A MINOR, AND K.G., A MINOR, RESPONDENTS.

JAMES ALFORD, PETITIONER,

v.

SARAH GREENE, ET AL., RESPONDENTS.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NEW YORK UNIVERSITY SCHOOL OF LAW FAMILY DEFENSE CLINIC, COLUMBIA LAW SCHOOL CHILD ADVOCACY CLINIC, THE BRONX DEFENDERS, THE BROOKLYN FAMILY DEFENSE PROJECT, AND THE CENTER FOR FAMILY REPRESENTATION, INC., AS AMICI CURIAE SUPPORTING RESPONDENTS

MARTIN GUGGENHEIM
CHRISTINE GOTTLIEB
NEW YORK UNIVERSITY SCHOOL OF LAW FAMILY DEFENSE CLINIC
245 Sullivan St.
New York, NY 10012
Telephone: (212) 998-6460
Email: guggenh@exchange.law.nyu.edu

CHARLES L. KERR
Counsel of Record
MARK DAVID MCPHERSON
ADAM JACKSON HEINTZ
HEIDI JOHANNS
MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, NY 10104
Telephone: (212) 468-8000
Email: ckerr@mofo.com

Counsel for Amici Curiae

JANUARY 31, 2010

[Additional Counsel Listed On The Inside Cover]

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

Susan Jacobs
Center for Family
Representation, Inc.
116 John St.
19th Floor
New York, NY 10038
Telephone: (212) 691-0950
Email: sjacobs@cfrny.org

Lauren Shapiro
Brooklyn Family
Defense Project
177 Livingston St.
7th Floor
Brooklyn, NY 11201
Telephone: (347) 592-2500
Email:
lshapiro@bfdp.ls-nyc.org

Jane M. Spinak
Columbia Law School
Child Advocacy Clinic
Rm. 205, William Warren Hall
410 W. 116th St.
New York, NY 10027
Telephone: (212) 854-3857
Email:
spinak@law.columbia.edu

Kara Finck
The Bronx Defenders
860 Courtlandt Ave.
Bronx, NY 10451
Telephone: (718) 838-7839
Email:
karaf@bronxdefenders.org

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BRIEF FOR THE NEW YORK UNIVERSITY SCHOOL OF LAW FAMILY DEFENSE CLINIC, COLUMBIA LAW SCHOOL CHILD ADVOCACY CLINIC, THE BRONX DEFENDERS, THE BROOKLYN FAMILY DEFENSE PROJECT, AND THE CENTER FOR FAMILY REPRESENTATION, INC. AS AMICI CURIAE SUPPORTING RESPONDENTS

The New York University School of Law Family Defense Clinic, Columbia Law School Child Advocacy Clinic, The Bronx Defenders, The Brooklyn Family Defense Project, and The Center for Family Representation, Inc., respectfully submit this brief as amici curiae in support of Respondents.[1]

INTEREST OF AMICI CURIAE

Amici are academics and service providers who collectively represent thousands of families each year in New York City. We have published dozens of articles and books on the child welfare system and have trained hundreds of young lawyers and social workers to represent and serve families. We submit this brief because it is our firm belief, supported by many years

[1] Pursuant to Supreme Court Rule 37.3(a), blanket letters from the parties consenting to the filing of this brief have been filed with the Clerk of the Court. In addition, pursuant to Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than amici curiae, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

of experience with thousands of families, that it is essential to mandate the review of a neutral magistrate prior to the nonemergency interrogation of a young child at school about intimate sexual topics. Without such review, the child protection system will inflict certain harm to the rights and well-being of the very children that it seeks to help.

Established in 1990, the **New York University School of Law Family Defense Clinic (the "Clinic")** was the first law school clinic in the country to train students to represent parents accused of child abuse and neglect and prevent the unnecessary break-up of indigent families. A pioneer of interdisciplinary representation in the field, the Clinic teaches law and graduate-level social work students to collaborate to protect family integrity and help families access services that keep children safe and out of foster care.

Under supervision, Clinic students represent parents in New York City Family Courts in child abuse and neglect and termination of parental rights proceedings.

Clinic faculty teach, research, and write in the field of child welfare, advocate for policy reform, and train and provide technical support to parent advocates across the country.

The **Child Advocacy Clinic ("CAC") at Columbia Law School** has provided representation to children in the child welfare system for almost thirty years. The CAC has a long history of developing tangible ways in which law school students and faculty can contribute to child and family advocacy in

New York and throughout the country. Students in the CAC have represented individual clients in Family Court, other trial level courts, and in the Appellate Division of the New York Supreme Court, participated in impact litigation, lobbied for reform on the city and state levels, drafted legislation and regulations, organized lectures and conferences, and provided background papers and other research for policy makers, legislators and judges.

The Bronx Defenders employs a groundbreaking system of holistic defense to fight both the causes and consequences of involvement in the child welfare and criminal justice systems. Located in the heart of the South Bronx, its interdisciplinary legal teams of criminal, civil, and family defense lawyers, social workers, parent advocates, investigators, and community organizers advocate for clients in Family, Civil and Criminal Court. In 2007, The Bronx Defenders Family Defense Practice became the first institutional provider of holistic representation on behalf of parents in the Bronx. Since then, it has represented thousands of parents accused of neglect or abuse in Bronx Family Court. At the trial and appellate level, it litigates the illegal and improper removal of children from their parents and fights for families to be reunited.

The Brooklyn Family Defense Project ("BFDP") is an interdisciplinary office of Legal Services NYC, one of the largest providers of free civil legal services in the country. In 2007, BFDP was granted the first-ever contract from the City of New York to provide legal defense to Brooklyn parents accused of child

abuse and neglect, taking on representation of over 870 new respondents each year. It has a current case load of over 1,600 families. BFDP integrates social workers into its legal practice in order to ensure clients receive effective social services and support. In addition to its Family Court practice, BFDP has an appellate practice that addresses critical issues of constitutional and statutory law, and engages in systemic advocacy that has resulted in significant improvement in child welfare policy in New York City. On a daily basis, BFDP is charged with protecting the rights of low income families to family integrity and privacy against unwarranted state intervention in their lives.

The Center for Family Representation, Inc. ("CFR") is a law and policy organization tasked with representing over 1,000 parents per year in child abuse and neglect proceedings in the City of New York. To help strengthen families and keep children out of foster care, CFR has developed an innovative model of representation that provides each client with a team that includes a lawyer, a social worker, and a parent advocate. Parent advocates have personal experience as the subjects of child protection investigations, which they draw on to effectively support and engage parents currently involved with child protection proceedings. This model has drawn national attention and is being adopted in other states.

CFR is also a training center for a wide range of practitioners in the field of child protection, including judges, social service providers, caseworkers, and lawyers for children, parents, and the government.

SUMMARY OF THE ARGUMENT

This case poses the traditional Fourth Amendment inquiry—whether a search and seizure is unreasonable—in a unique context. Although the Court has limited children's Fourth Amendment protections when they are at school and are suspected of breaking rules, the Court's prior school search cases have never tested the intersection between the Fourth Amendment and a family's constitutionally protected privacy and liberty interests, which are directly implicated in this case. The interrogation at issue forced a nine-year-old, elementary school child to respond to intimate sexual questions without evidence of an emergency, review by a neutral magistrate, or permission from her mother—against whom no allegation of abuse has ever been made. The interrogation therefore raises important concerns about the reasonableness of questioning and confronting a young child about sexual activity, an intimate subject that this Court—and our society—has generally left to the family to control. Because families have constitutionally protected privacy and liberty interests in controlling how their children are exposed to such an intimate topic as sex and sexual abuse, the Fourth Amendment must be read to recognize and validate such privacy interests.

Perhaps most importantly, amici urge the Court to consider the full implications of a contrary reading of the Fourth Amendment in this context. Reading the Fourth Amendment to permit the type of search and detention at issue here, without either parental

consent or approval by a neutral magistrate, would not only ignore a family's constitutionally protected privacy and liberty interests. It would also grant unfettered authority to child welfare caseworkers to conduct interrogations of children concerning sexual abuse. In a number of ways, such a grant of authority would frustrate the state's own interests here, subjecting millions of children to incalculable and irreversible damage.

First, although they perform an admirable task, child welfare caseworkers are widely acknowledged to suffer from chronic turnover, limited supervision, and insufficient training. They do not have the training, expertise or certification required of judges, doctors, psychologists, police or social workers. In the experience of the amici, they frequently offer inaccurate or even harmful assessments based on these deficiencies as well as their lack of neutrality.

Second, abrogating traditional Fourth Amendment requirements would endanger many children, by removing them from the protection and support of non-abusive parents like Sarah Greene at an extremely vulnerable time. Children have a constitutional right to have their parents make key child-rearing decisions at such a traumatic juncture. Moreover, research has demonstrated that non-abusive parents play a crucial role in the reporting and subsequent treatment of child sexual abuse. In fact, parents are usually the parties most motivated to investigate and treat child sexual abuse. Unless there is evidence of an emergency, child protective caseworkers should

not be empowered to ignore non-abusive parents while simultaneously circumventing the review of a neutral magistrate.

This Court should therefore affirm the Ninth Circuit's holding that a neutral magistrate must be consulted before a child welfare caseworker and police officer can interrogate a young child, at school, when there is no emergency and when her parents have not consented to the search. As detailed below, that ruling follows the historic mandate of the Fourth Amendment to protect against unreasonable searches and seizures, while still enabling the state to pursue the vital work of investigating reported sexual abuse of children.

ARGUMENT

I. REQUIRING PARENTAL CONSENT OR JUDICIAL REVIEW BEFORE DETAINING AND QUESTIONING A CHILD CONCERNING SEXUAL ABUSE ALLEGATIONS IS THE ONLY WAY TO VINDICATE A FAMILY'S CONSTITUTIONALLY PROTECTED PRIVACY AND LIBERTY INTERESTS.

A. The Detention And Interrogation Of A Child Concerning Sexual Abuse Implicates That Child's Fourth Amendment Rights And A Family's Constitutionally Protected Privacy And Liberty Interests.

1. The Fourth Amendment has long protected those privacy interests that society recognizes as

reasonable. In *Katz*, this Court first used the phrase "reasonable expectation of privacy" to demarcate the areas to which the Fourth Amendment's protection extends. *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring) ("a person has a constitutionally protected reasonable expectation of privacy"). Since *Katz*, whether one has a "reasonable expectation of privacy" in a particular setting or concerning a particular interest has been a central measure of whether Fourth Amendment protections apply. *See, e.g., Kyllo v. United States*, 533 U.S. 27, 35-36 (2001); *City of Ontario v. Quon*, 560 U.S. ___, 130 S. Ct. 2619, 2629 (2010). This has been no less true when the Court has measured the reasonableness of school house searches. *See Safford Unified Sch. Dist. #1 v. Redding*, 557 U.S. ___, 129 S. Ct. 2633, 2641 (2009) (holding that "both subjective and reasonable societal expectations of personal privacy support the treatment of such a [strip] search as categorically distinct, requiring distinct elements of justification on the part of school authorities for going beyond a search of outer clothing and belongings"). As the Court explained in *California v. Ciraolo*, "*Katz* posits a two-part inquiry: first, has the individual manifested a subjective expectation of privacy in the object of the challenged search? Second, is society willing to recognize that expectation as reasonable?" 476 U.S. 207, 211 (1986).

2. Amici submit that the state here intruded into an area that is not just recognized by society as private, but enshrined as such. When the state's

agents interrogated a young child, at school, about sexual conduct and about her family, they were reaching into an area that Americans deem deeply private. This Court's decisions have long acknowledged society's recognition of a family's expectation of privacy in this area of their lives.

Long before *Katz* was decided, the Court recognized parents and children's fundamental right to have parents control the essential decisions about a child's care, custody, upbringing, and education. *See, e.g.*, *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925) ("The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only"); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) ("the interest of [parents] in the companionship, care, custody and management of [their] children" is significant; "The rights to conceive and raise one's children [are] 'essential,' among the 'basic rights of man,' and are 'rights far more precious . . . than property rights'") (citing cases and quoting *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942)); *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

Though often articulated as the *parent*'s right to make decisions concerning a child's care, custody, upbringing, and education, the right is a reciprocal one, belonging to the child as much as the adult. *See, e.g.*, *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977) (reasoning that the "right to the preservation of family integrity encompasses the reciprocal

rights of both parent and children"); *and cf. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 531-32 (2007) (describing the rights of parents and children in a different context as "intertwined"); *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944) (noting that family religious practice involves both the "rights of children to exercise their religion, and of parents to give them religious training" and describing rights protected in *Pierce* to encompass both parents and children).

This right—shared by parents and children alike—is not just recognized as legitimate; it is recognized as fundamental to our society. "Choices about marriage, family life, and the upbringing of children are among associational rights [the Supreme] Court has ranked as 'of basic importance in our society,' rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect." *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996) (internal citation omitted); *see also Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"); *see also, e.g., Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) ("the right of the individual to . . . establish a home and bring up children . . . " is a privilege "long recognized at common law as essential to the orderly pursuit of happiness by free men");

Pierce, 268 U.S. at 535 ("The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations").

3. A family's fundamental right to control its family life and the upbringing of its children necessarily encompasses the right to control how and when to discuss with the family's children sex and sexual relations. Decisions about introducing children to sexual information are important, value-laden child-rearing choices. *See, e.g.*, Doreen A. Rosenthal and Shirley Feldman, *The Importance of Importance: Adolescents' Perceptions of Parental Communication About Sexuality*, 22 J. of Adolesc. 835 (1999) ("Parents, in particular, have been urged to play a pivotal role in the sex education of their children, in part because of their primary role in preparing young people for adult life and because sexuality brings with it questions of values and morality"); James Jaccard, *et al.*, *Parent-Adolescent Communication About Sex and Birth Control: A Conceptual Framework*, 97 New Directions For Child & Adolesc. Dev. 9, 27 (2002) ("studies indicate individual differences in the topics that parents think should be discussed with their adolescents"); Cynthia D. Silverstein & Germaine M. Buck, *Parental Preferences Regarding Sex Education Topics for Sixth Graders*, 21 Adolesc. 971 (1986) (noting wide variation among parents about the propriety of discussing twelve different sensitive topics during communication about sex and sexuality). How to

introduce sexual information to young children, what language to use, what information to provide, under what circumstances, and with what moral or religious context, are therefore complicated issues central to the constitutionally protected sphere of parental care of children. For this reason, Oregon, like most other states, has recognized that there is a strong interest in parental decision-making with respect to the introduction of sexual topics to children. *See* Or. Rev. Stat. Ann. § 336.465 (providing parents with a right to notice of "any instruction on human sexuality," to review the curricula in advance of such instruction, and to prevent their children from participating in sex education even when enrolled in public institutions); *see also* David Rigsby, *Educ. Law Chapter: Sex Educ. in Schools*, 7 Geo. J. Gender & L. 895, 898 (2006) ("Of the thirty-two states that require or permit sex education, twenty-five states' statutes contain opt-out or opt-in provisions") (citing statutes).

Children's interests in having their parents make decisions regarding the introduction of sexually explicit information is only heightened where, as here, there are suspicions that the child has been sexually abused. At such times, in addition to the concerns typically related to introducing sexual subject matter, the child is entitled to have a parent decide how to handle what might be the most traumatic event of the child's life. Indeed, researchers have noted that treatments involving a non-abusive parent "are currently the best documented, effective treatments" for sexual abuse in children. Frank W.

Putnam, M.D., *Ten-year Research Update Review: Child Sexual Abuse*, 42 J. Am. Acad. Child & Adolesc. Psychiatry 269 (2003); *see also* Jacqueline Corcoran & Vijayan Pillai, *A Meta-Analysis of Parent-Involved Treatment for Child Sexual Abuse*, 18 Research on Social Work Practice 453, 454 (2008) (surveying research and concluding that "parent-involved treatment for sexual abuse in children has been regarded as one, if not the best, available treatment for child sexual victimization").

4. In this sense, the factual context at issue here is analogous to cases involving medical decision-making, which, throughout U.S. history, the common law has left to parents to control. The reasons caretaking responsibility generally rests with parents—that parents typically know their children best, love them most deeply, are best motivated and situated to determine how to address their individual needs, *see Parham v. J.R.*, 442 U.S. 584, 602 (1979) ("historically it has [been] recognized that natural bonds of affection lead parents to act in the best interests of their children")—make it particularly important that parents be the ones to make decisions at such a crucial juncture in a child's life, as when a child is questioned about allegations of sexual abuse.

5. Fourteenth Amendment rights and common law rights to medical decision-making are, of course, distinct from Fourth Amendment rights. But this country's jurisprudence on fundamental family rights illustrates that the privacy interests at stake here are well-established, and should be vindicated through

the Fourth Amendment's warrant requirement. *See Troxel*, 530 U.S. at 87 (Stevens, J., dissenting) (noting that the "fundamental liberty interest in caring for and guiding [one's] children" connects to "a corresponding privacy interest").

Indeed, this Court frequently looks to other areas of law to determine whether a party's privacy expectations are reasonable enough to call for Fourth Amendment protection. In *Rakas v. Illinois*, for example, the Court grounded its decision in property law: noting that "[o]ne of the main rights attaching to property is the right to exclude others, and one who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of this right to exclude," 439 U.S. 128 (1978) (citation omitted), the Court held that, because defendants had not asserted such a property right in a car that was searched, they had no reasonable expectation of privacy and the search did not violate the Fourth Amendment. *See id.* Existing law has been used to measure the reasonableness of a privacy expectation in other contexts, as well. *E.g., Florida v. Riley*, 488 U.S. 445 (1989) (White, J., concurring) (no reasonable privacy expectation in aerial footage of greenhouse when FAA regulations permitted low flights overhead).

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The threshold for Fourth Amendment protection is, in other words, more than satisfied here. *Katz* requires only that society recognize a person's expectation of privacy as reasonable before the Fourth

Amendment is held to protect it. Here, society has long recognized as not just reasonable—but fundamental—parents and children's privacy and liberty interests in reserving to the family the control of family life and the upbringing of its children.

B. Children's And Parents' Expectation Of Privacy In Their Family Relationships And Child-Rearing Extends To Schools.

Contrary to Petitioners' arguments (*see* Camreta Brief dated December 10, 2010 ("Camreta Br.") at 30; Alford Brief dated December 10, 2010 ("Alford Br.") at 50), a family's privacy and liberty interests do not evaporate at the schoolhouse gate. The school search cases Petitioners cite are inapposite for several reasons.

1. First, the privacy interests at stake in the cases in which this Court approved warrantless school searches did not involve fundamental family relationships or the right to parental control of crucial child-rearing decisions. *T.L.O.* and later schoolhouse cases weighed the privacy interests that children suspected of wrongdoing had in their clothing, body, urine, or possessions when school officials conducted searches of such items. *See, e.g., New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (search of student's purse by school administrator); *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995) (urine drug testing of student athletes); *Bd. of Educ. v. Earls*, 536 U.S. 822 (2002) (urine drug testing of all students participating in any extracurricular activities); *Safford*, 557 U.S. ___, 129 S. Ct. 2633 (search of 13-year-old

female student that included shaking out bra and lifting elastic of underwear, conducted by school administrator and nurse under administrator's direction). In each case, the Court found that children have limited privacy interests because certain disciplinary aspects of custody and control are given over to schools when parents enroll their children. *See, e.g., T.L.O.*, 469 U.S. at 341; *Vernonia*, 515 U.S. at 654-55, 656 ("When parents place minor children in private schools for their education, the teachers and administrators of those schools stand *in loco parentis* over the children entrusted to them . . . the nature of [children's constitutional] rights is what is appropriate for children in school") (citations omitted). Certainly, the interests of the schoolchildren in those cases were important, and the intrusions were not trivial. But none of those searches involved outside officials invading the private family realm by questioning a child for hours about intimate sexual topics. Nor could any of the searches have led to the removal of children from their parents' custody.

Moreover, S.G.'s family did not lose their reasonable expectation of privacy in their family life and in areas of sexuality simply through S.G.'s presence at school. As *Katz* recognized, individuals carry their privacy interests with them: in Justice Stewart's words, "the Fourth Amendment protects people, not places." *Katz* at 351. And this Court has noted in other circumstances that liberty interests extend beyond spatial bounds. *See Lawrence v. Texas*, 539 U.S. 558, 562 (2003) ("there are other spheres of our lives and existence, outside the home, where the State should not be a dominant presence. Freedom

extends beyond spatial bounds."). S.G.'s Fourth Amendment right is therefore one that she carries with her—whether at home, on the street or in school. *See also* Or. Rev. Stat. Ann. § 336.465.

2. Second, as Respondents discuss in their brief at 74, this case is different from the school search decisions Petitioners rely upon: parents explicitly or implicitly consented to their child's search in those cases. Here, the state never asked S.G.'s parents—even her mother, who was not alleged to have played any role in the suspected abuse of S.G.—to consent to the search. A parent cannot be said to consent to having her child interrogated by police and child welfare caseworkers about intimate sexual topics merely by sending her to school. Nor can S.G.'s parents be said to have expected that their child might be questioned by law enforcement officers concerning sexual abuse allegations. Although teachers are mandated reporters who can be expected to transmit reports of child abuse to the state, a teacher's duties do not give rise to an expectation that law enforcement officers or their agents will enter the school at will, with no report from the child, and then interrogate her about sexual abuse.

II. MAGISTRATES—NOT CHILD WELFARE CASEWORKERS—SHOULD BALANCE THE LEGAL RIGHTS AND POTENTIAL HARMS TO CHILDREN TO DECIDE WHEN TO CIRCUMVENT PARENTAL CONSENT.

Intrusions on a family's privacy and liberty interests are sometimes necessary, of course. The damage caused by child abuse is grievous and child

abuse is unquestionably a valid reason for state intervention. But even the most pressing social interests do not justify disregard of constitutional protections. As the Court noted in *Safford v. Redding*, both parents and public officials may tend to overreact to protect children from danger. "The difference is that the Fourth Amendment places limits on the official." 557 U.S. ___, 129 S. Ct. at 2643. In conducting interviews such as the one at issue here—interrogations lacking parental consent, judicial authorization, or exigent circumstances—the state risks replacing the potential harm of parental abuse of children with the certain harm of state interference in parental child-rearing.

To protect against such state intrusion into family life, the Fourth Amendment requires a warrant—or at least the approval of a neutral judicial officer—before questioning a child concerning sexual abuse, in the absence of parental consent. As detailed below, only neutral and independent magistrates can adequately balance the legal rights and potential harms to children when a caseworker seeks to circumvent parental consent to conduct an interview about intimate sexual details with a young child. Requiring judicial review in this context does nothing to hamper law enforcement, while ensuring that in each case, the risks to the child from potential abuse are balanced against both the risks from potential intervention and against that child's legal rights.

A. A Neutral, Detached, And Expert Arbiter Is Crucial When Weighing The Important Legal Rights And Potential Harms In Child Abuse Cases.

The Fourth Amendment compels review by a neutral and detached magistrate before searches such as the one here occur.[2] *See, e.g., Johnson v. United States*, 333 U.S. 10 (1948) (Fourth Amendment requires that a neutral and detached magistrate weigh whether there is sufficient probable cause to issue a

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[2] This Court need not address whether probable cause must have supported the detention and interrogation here, or if a lesser standard is more appropriate. The Ninth Circuit's statement that probable cause is required was dictum, written in a footnote. *Greene v. Camreta*, 588 F.3d 1011, 1030 n.19 (9th Cir. 2009); *see, e.g., Wainwright v. Witt*, 469 U.S. 412, 422 (1985) (declining to decide issue raised in footnotes because such statements were dicta and noting that "[t]his Court has on other occasions similarly rejected language from a footnote as 'not controlling' "); *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 76 (1990) ("[A]lthough we affirm the Seventh Circuit's judgment . . . we do not adopt the Seventh Circuit's reasoning"); *Smith v. Phillips*, 455 U.S. 209, 215, n.6 (1982); *SEC v. Chenery Corp.*, 318 U.S. 80, 88 (1943); *Langnes v. Green*, 282 U.S. 531, 536-37 (1931); *Williams v. Norris*, 25 U.S. 117, 120 (1827) (Marshall, C.J.).

The relevant holding that this Court should affirm is the Ninth Circuit's determination that a neutral magistrate should be consulted before a nonconsensual, nonemergency search like the one that occurred in this case. There are occasions—and this may well be one—in which a showing of less-than-probable cause is appropriate for courts to authorize law-enforcement or social-services officials to conduct a search or seizure. *See, e.g., Kaupp v. Texas*, 538 U.S. 626 (2003); *Hayes v. Florida*, 470 U.S. 811 (1985); *Davis v. Mississippi*, 394 U.S. 721 (1969). That determination should be left to another day.

search warrant); *Katz v. United States*, 389 U.S. 347 (1967) (same). As this Court explained in *Groh v. Ramirez*, "[w]hen the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent." 540 U.S. 551, 575 (2004) (quoting *Johnson*).

This core Fourth Amendment protection applies with equal force here. As detailed above, families have constitutionally protected privacy and liberty interests in controlling how their children discuss such an intimate topic as sex and sexual abuse. Those constitutional interests ground a reasonable expectation of privacy. The Fourth Amendment therefore requires a warrant—or at least the approval of a neutral judicial officer—before a child can be questioned about sexual abuse without his or her parent's consent.

The Ninth Circuit was therefore correct to reject the application of the "special needs" exception here. The essence of that exception is that certain fields are poorly suited to traditional requirements that depend on the use of neutral and detached magistrates. Neither child protection, nor police investigations involving allegations of child abuse, falls in those categories of investigations to which the Court has chosen not to apply the Fourth Amendment's warrant requirement. In rejecting the special needs exception, then, the Ninth Circuit did not blaze a new path; it followed settled law in several jurisdictions. *See, e.g.*, Alabama (Ala. Admin. Code r. 660-5-34-.02(1)(d);

Colorado (Colo. Rev. Statutes § 19-3-308(3)(b)); Indiana (Ind. Code § 31-33-8-7)); New Hampshire (N.H. Rev. Stat. Ann. § 169-C:34(VI)); West Virginia (Child Protective Services Policy 3.4 & 3.5 (Rev. July 10, 2008), available at http://www.wvdhhr.org/bcf/children_adult/cps/policy/CPSPolicy7_10_08_1.pdf).

B. Child Welfare Caseworkers Should Not Be The Arbiters Of Children's Constitutional Rights.

Child welfare caseworkers should not be asked to weigh the crucial and complex risks at stake when a child is suspected of being a victim of sexual abuse. In amici's extensive experience, these individuals sadly breach accepted best practices in such cases far more often than they implement them. Child welfare caseworkers—while undoubtedly deserving of credit for doing important work toward the protection of children—simply are not qualified to decide when, absent emergency, constitutional expectations of privacy are outweighed by other interests.

Although this Court recognizes that police officers gain a special expertise from their training and on-the-job experience, *see, e.g., United States v. Mendenhall*, 446 U.S. 544, 565-66 (1980) (noting "the considerable expertise that law enforcement officials have gained from their special training and experience"), the Fourth Amendment's general mandate requires judicial authorization for all nonemergency seizures which are more than limited street stops. *See, e.g., Terry v. Ohio*, 392 U.S. 1, 29 (1968).

Whatever deference is shown to police officers in other, limited contexts, child welfare caseworkers—though they perform a difficult task—do not have the expertise of police officers. *See, e.g.*, Vivek Sankaran, *Wells Conference on Adoption Law: Judicial Oversight Over the Interstate Placement of Foster Children*, 38 Cap. U.L. Rev. 385, 391 (2009) ("the unfortunate reality is that child welfare procedures are often conducted by young, inexperienced workers who lack specialized training and carry high caseloads"). Researchers have noted the substantial challenges that face child welfare caseworkers and diminish their training and qualifications:

> a chronic shortage of caseworkers works against efforts to increase educational requirements. Fewer than 15% of child welfare agencies require caseworkers to hold either a bachelor's or master's degree in social work, despite evidence that caseworkers holding these degrees have higher job performance and lower turnover rates. Moreover, caseworker salaries are often low, and in some jurisdictions there is wide variation in salaries between public and private caseworkers. Thus, recruiting and retaining quality caseworkers is an ongoing challenge for most child welfare agencies.

Sandra Bass, *et al., Children, Families, and Foster Care: Analysis and Recommendations*, 14 The Future of Children 5, 24 (2004), available at http://futureofchildren.org/futureofchildren/publications/docs/14_01_01.pdf.

In Oregon, for example, child welfare caseworkers undergo only four weeks of training in the first three months of beginning their jobs.[3] Police officers in Oregon, by contrast, must graduate from a police academy after sixteen weeks of coursework and training. *See* Oregon Dep't of Public Safety Standards & Training, *DPSST Strategic Plan 2007-09 Biennium*, http://www.oregon.gov/DPSST/StrategicPlan200709.shtml. In Bend, Oregon, that sixteen-week training is supplemented by a four-week Bend Police Department Orientation Academy, a one-week "advanced academy" and a field training program lasting an additional seventeen weeks. *See* Bend Police Dep't, *Prof'l Career Opportunities*, available at http://www.ci.bend.or.us/depts/police/employment/patrol_officer.html. In sum, a new police officer in Bend undergoes thirty-eight weeks of training, nearly ten times the preparation that a new child welfare caseworker receives.

Moreover, turnover in the child welfare field is chronically high. *See* Child Welfare League of America, Child Welfare Workforce, *Research Roundup* (Sept.

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[3] According to the Oregon Department of Human Services, child welfare staff must attend four weeks of training in their first several months of work. Oregon Dep't of Human Servs., Children, Adults & Families, *Mandatory Child Welfare Staff Training Program—Policy*, Policy No. III-E.5.1.1 (Effective Jan. 6, 2003), available at http://www.dhs.state.or.us/policy/childwelfare/manual_3/iii-e511.pdf; *see also* Ctr. for Improvement of Child & Fam. Servs. Portland State Univ., Sch. of Soc. Work, *DHS Training*, available at http://www.ccf.pdx.edu/cwp/pgCWP_dhs_training.php.

2002), available at http://www.cwla.org/programs/r2p/rrnews0209.pdf (child welfare agencies experience turnover that frequently exceeds 50% per year. Position vacancy rates often surpass 12%); Annie E. Casey Foundation, *The Unsolved Challenge of System Reform: The Condition of the Frontline Human Services Workforce* (2003), available at http://www.aecf.org/upload/publicationfiles/the%20unsolved%20challenge.pdf (child welfare workforce turns over at an annual rate of 20% for public agencies and 40% for private agencies).

Child welfare workers also lack the training and qualifications of social workers,[4] psychologists, or

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[4] The amicus brief submitted by the National Association of Social Workers ("NASW") is puzzling in several respects. First, it consistently conflates child protective caseworkers with social workers, even though the vast majority of child protective caseworkers are not social workers. *See, e.g.*, Sandra Stukes Chipungu & Tricia B. Bent-Goodley, *Meeting the Challenges of Contemporary Foster Care*, 14 The Future of Children 75, 83 (2004), available at http://futureofchildren.org/futureofchildren/publications/docs/14_01_04.pdf. In fact, social workers have objected vociferously to mistaking the two, noting that child welfare caseworkers have substantially less training than social workers. *See* Kenneth J. Lau, *et al.*, *Mandated Reporting of Child Abuse and Neglect: A Guide for Social Workers* 18 (Springer Publ'g Co., New York 2009) (child protective caseworker positions, "when filled by persons other than those holding a degree in social work, are appropriately defined as 'casework' positions, *not* social work positions. Persons occupying these positions without a social work degree should be referred to as *caseworker*. Referring to such persons as *social workers* devalues the integrity of the social work profession."). And "where the practice of social work is regulated through a

(Continued on following page)

doctors. Child welfare workers rarely have any kind of advanced degree. Sandra Stukes Chipungu & Tricia B. Bent-Goodley, *Meeting the Challenges of Contemporary Foster Care*, 14 The Future of Children 75, 83 (2004), available at http://futureofchildren.org/futureofchildren/publications/docs/14_01_04.pdf ("only one-third of child welfare workers are trained social workers," 90% of state child welfare agencies

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professional licensing system, holding oneself out as a 'social worker' without the proper credentials and licensing would be considered the illegal practice of social work without a license." *Id.* NASW's own website explains that social workers have "all earned bachelor's, master's or doctoral social work degrees, and have completed a required number of hours in supervised fieldwork." NASW, *Professional Standards*, available at http://www.helpstartshere.org/professional-standards. Child protective caseworkers simply do not have such standards. NASW itself issued a report finding as much. NASW, *If You're Right for the Job, It's the Best Job in the World*, at 4 (June 2004), available at http://www.naswdc.org/practice/children/NASWChildWelfareRpt062004.pdf (determining that social workers represent a small minority of child welfare caseworkers and discussing the "bleak picture" for the child welfare workforce, including "limited or inadequate supervision; and insufficient training").

Second, NASW argues that Bob Camreta—who by all accounts is not himself a social worker—is highly trained and experienced. Amicus Brief of the NASW, dated December 17, 2010 ("NASW Br.") at 28 n.4. Yet it provides no indication of what that training or expertise is. Third, by implicitly blaming mothers for the violence of fathers, as discussed in greater detail *infra* at 33-36, NASW embraces a view repudiated by social work researchers and educators. *See, e.g.*, Christina Risley-Curtiss and Kristin Heffernan, *Gender Biases in Child Welfare*, 18 Affilia 395 (2003) (condemning "mother blaming" and noting that social workers have "a critical role to play in moving the child welfare field toward a nonsexist approach to children and families").

report difficulty in recruiting and retaining workers, and documenting "Exceedingly high numbers of caseloads, poor working conditions, high turnover rates, and a poor public perception of the child welfare system. . . ."). Social workers, psychologists and doctors, by contrast, must undergo years of post-graduate education and satisfy a rigorous certification procedure.

Perhaps in part because of their limited education, training, and expertise, child welfare caseworkers are charged only with determining whether an interview of the child would benefit the investigation, not with considering whether there is a basis to overcome the child's right to have parents make these decisions. That role is rightly filled by a neutral magistrate.

C. Interrogations Of Children Concerning Alleged Sexual Abuse Are Extremely Intrusive And Can Be Permanently Damaging.

Interrogations such as the one to which S.G. was subjected damage children in ways that cannot be undone. *Greene v. Camreta*, 588 F.3d at 1011 (noting the "risk that 'in the name of saving children from the harm that their parents and guardians are thought to pose, states ultimately cause more harm to many more children than they ever help'") (quoting Doriane Lambelet Coleman, *Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment*, 47 Wm. & Mary L.

Rev. 413, 417 (2005)); *Franz v. Lytle*, 997 F.2d 784, 792-93 (10th Cir. 1993) ("we must be sensitive to the fact that society's interest in the protection of children is, indeed, multifaceted, composed not only with concerns about the safety and welfare of children from the community's point of view, but also with the child's psychological well-being, autonomy, and relationship to the family"). The interview may undermine family integrity and trust and suggest that it is not safe to trust parents. "Children . . . react even to temporary infringement of parental autonomy with anxiety, diminished trust, loosening of emotional ties, or an increasing tendency to be out of control." Joseph Goldstein, *et al.*, *Before the Best Interests of the Child* 25 (The Free Press, 1979). The interrogation may additionally encourage children to keep secrets from parents, who are sometimes never told of such interviews.

Indeed, even Petitioners themselves acknowledge the deep and lasting harms to which sexual abuse interrogations subject children. Alford Br. at 42 (quoting John E.B. Myers, *The Legal Response to Child Abuse: In the Best Interest of the Children?*, 24 J. Fam. L. 149, 182-84 (1985)); Camreta Br. at 28-29.

Abrogating a child's Fourth Amendment rights is no way to lessen the potential risks of child sex abuse investigations. On the contrary, as with medical care decisions, the constitutional presumption is that parents will make the best decisions for their children. Parents have the most information about the child's individualized needs (*e.g.*, in what environment the

child is most likely to be comfortable to be forthcoming, or whether the child has developmental needs that should be accommodated in an interview), and are usually the most motivated to have those needs drive decisions concerning their children. In some situations parents might also be aware of information that would explain the cause for concern without unnecessarily subjecting the child to interrogation. Child welfare caseworkers, by contrast, are under various pressures to meet the demands of their jobs. "[I]f officers of the State come to believe that they can never be questioned in a court of law for the manner in which they remove a child from her ordinary care, custody and management, it is inevitable that they will eventually inflict harm on the parents, the State, and the child." *Tenenbaum v. Williams*, 193 F.3d 581, 595 (2d Cir. 1999).

Moreover, the parent may be in a position to privately retain someone with far more expertise than the caseworker to conduct the interview. They may choose, for example, to observe the Guidelines for Clinical Evaluation for Child and Adolescent Sexual Abuse, issued by the American Academy of Child & Adolescent Psychiatry, and enlist a child sex abuse specialist with advanced degrees or specialized training to conduct the crucial first interview. *Cf.* Am. Acad. of Child & Adolesc. Psychiatry, *Guidelines for the Clinical Eval. for Child & Adolesc. Sexual Abuse* (modified Dec. 1990), available at http://www.aacap.org/cs/root/policy_statements/guidelines_for_the_clinical_evaluation_for_child_and_adolescent_sexual_abuse.

A parent may also conclude, as researchers have, that it would be more appropriate to conduct the first interview at a Child Advocacy Center, "safe, neutral, child-friendly facilities where children and families can receive a range of services. These include forensic interviews conducted by trained interviewers, medical examinations, mental health services, victim support and advocacy, case review by the multidisciplinary team, and tracking of case progress and outcomes."[5] Lindsey E. Cronch, *et al.*, *Forensic Interviewing in Child Sexual Abuse Cases: Current Techniques and Future Directions*, 11 Aggression & Violent Behavior 195 (2006); *see also* John E.B. Myers, *Myers on Evidence in Child, Domestic and Elder Abuse Cases I*, at 47 (2005) ("As often as possible, children should be interviewed at specialized child advocacy centers, where interviewers are highly trained, interviews are videotaped, and interviewers

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[5] Unlike the interrogation that occurred in this case, Child Advocacy Centers also videotape initial interviews in accordance with the "consensus . . . that videotaping is preferable" because it reduces the likelihood of traumatic additional interviews and because "recording is the best way to ensure accuracy." John E.B. Myers, *Myers on Evidence in Child, Domestic and Elder Abuse Cases I*, at 53-54 (2005) (and citing research that "interviewers tended to have incorrect recollections of how they questioned children"). Videotaped interviews of child sexual abuse victims have the substantial advantage of providing more reliable and persuasive evidence to courts later assessing whether abuse occurred. *Id.* at 55-56 (citing numerous courts regarding the increased reliability provided by videotaped sex abuse interviews of children).

receive regular feedback and supervision of their work").

Sarah Greene and her young daughter were not given the option of such a state-of-the-art, professional first assessment to determine whether abuse took place. Instead, a nine-year-old girl was closeted in a room with a caseworker and a police officer without her mother's knowledge. This deprivation was not incidental. "[B]ad interviewing can lead to serious consequences. These may include eliciting false allegations, putting children and families through unnecessary stress, decreasing a child victim's credibility in court, contaminating facts, reducing probability of conviction, draining resources through unsuccessful trials and investigations, and reducing resources available for legitimate abuse cases." Cronen, 11 Aggression & Violent Behavior 195, 196. And the first interview is crucial. If poorly done, the first interview about possible sexual abuse may so taint the child's response that the parent will never be able to determine whether the child was in fact sexually abused. *See id.* at 203 (noting that researchers have found "significantly more new details were obtained in the first interview than in subsequent interviews and interviewers were more likely to use specific suggestive utterances in later interviews"). Of course, both false positives and false negatives are likely to be extremely damaging to the child and to preclude appropriate treatment. *E.g.*, Steven Herman, *Improving Decision Making in Forensic Child Sexual Abuse Evaluations*, 29 Law & Human Behavior 87, 88

(2005) ("when a low quality investigation fails to substantiate genuine allegations of sexual abuse, vulnerable children may be left unprotected and perpetrators may go on to victimize other children in the future . . . a low quality investigation that results in an erroneous decision to substantiate abuse when no abuse has occurred or when the perpetrator has not been correctly identified can lead to the wrongful destruction of the lives of innocent children, adults, and families").

Choices about how best to handle suspected child sexual abuse are, in short, absolutely central child-rearing decisions that should be made by parents or, when necessary, by neutral magistrates.

It is notable just how often these kinds of searches are based on false tips or occur when no abuse has taken place. More than 3.7 million investigations of child abuse took place in 2008 alone. Of these, 772,000 claims were substantiated—approximately 20%. U.S. Dep't of Health & Human Servs., Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, *Child Maltreatment* (2008), at 23, available at http://www.acf.hhs.gov/programs/cb/pubs/cm08/cm08.pdf. It is impossible to guess how many of the nearly three million unfounded investigations subjected children to damaging interrogations. Of course, reports of child abuse must be investigated. But surely when the process yields millions of baseless reports, it is vital to ensure meaningful oversight into the investigative process to prevent improper intrusions.

Otherwise, child "protective" services become a self-defeating endeavor, inflicting widespread harm on children and families in the name of their own best interests.

D. Requiring Judicial Review When Parents Are Not Consulted Would Not Hinder Investigations Of Child Abuse.

1. Judicial Review Would Rarely Be Necessary Because Parents Usually Consent To Interviews.

The great majority of parents consent to having their children interviewed by child welfare workers or police when abuse is suspected, with one scholar estimating that more than 90% give such consent. *See* Coleman, 47 Wm. & Mary L. Rev. at 417 ("over ninety percent of investigations are said to be based on consent"). When they do so, parents may make the interview less traumatic by reassuring the child before the interview, accompanying him or her at least to a waiting room, or advocating to have child psychologists or other professionals participate in the process.

That alone is reason for child welfare caseworkers to seek parental consent before interrogating children about sexual abuse allegations, and to seek judicial review to permit an interrogation only if consent is withheld. As the Court stated in *Camara v. Municipal Court of San Francisco*, when "most citizens allow inspections of their property without a warrant . . . as a practical matter and in light of the

Fourth Amendment's requirement that a warrant specify the property to be searched, it seems likely that warrants should normally be sought only after entry is refused. . . ." 387 U.S. 523, 539 (1967). Here, as in *Camara*, nonconsensual searches are usually unnecessary because of the ease with which the state can obtain consent. In those rare cases that parents refuse consent, child welfare caseworkers and police should turn to courts for approval.

2. *Non-Abusive Parents Like Sarah Greene Play A Crucial Role In The Investigative And Recovery Process.*

Petitioners ignore parents' crucial role in the interrogation process. Indeed, perhaps the most remarkable aspect of Petitioners' briefs to this Court is their thorough exclusion of Sarah Greene from their analysis. Petitioners argue that parental consent was impracticable and dangerous because S.G.'s father, Nimrod Greene, was himself suspected of the sexual abuse at issue. *See* Camreta Br. at 11 ("Seeking parental consent is simply not a safe or viable option when the suspected abuser is a parent"); Alford Br. at 41. No one is arguing that Nimrod Greene should have been consulted prior to the interview. But Petitioners fail to explain why S.G.'s mother—against whom no suspicion of abuse had ever been suggested—was not consulted. Beyond the constitutional presumption that Ms. Greene would make the best decisions for her daughter, there was additional reason to consult with her: part of the suspicion of sexual abuse rested on hearsay statements

that she was concerned about Nimrod Greene's behavior with their children. *See Greene v. Camreta*, 588 F.3d at 1016. Obtaining additional information from Ms. Greene concerning her alleged concerns before subjecting S.G. to an interrogation would have been advisable. Any concern that Camreta might then have had is exactly the sort of consideration that would have been better evaluated by a neutral arbitrator.

Amici in support of Petitioners go a step further, suggesting that mothers like Sarah Greene should not be consulted because they are, in effect, enablers of abuse. *See, e.g.*, NASW Br. at 15 ("non-abusive parents clearly have incentives such as family loyalty, denial, embarrassment, fear of retaliation, or loss of household income—to avoid an investigation"); Amicus Brief of the Arizona Prosecuting Attorneys Advisory Council dated July 2, 2010, at 22 (speculating that Sarah Greene knew of the abuse and claiming that "[T]he idea that parental consent can be obtained in this type of situation is nothing less than absurd").

Blaming mothers for the violence of fathers is a tired canard; social science research and courts have repeatedly put it to rest. *See, e.g., Nicholson v. Williams*, 203 F. Supp. 2d 153, 253 (E.D.N.Y. 2002) (discussing now-repudiated legal history of blaming women when they were raped; holding that battered mothers should not be blamed for violence against them and that when children are removed from battered mothers because of the domestic violence,

"[t]he evidence demonstrated that . . . [these practices] harm children much more than they protect against harm"); Nat'l Council of Juvenile & Family Court Judges Family Violence Dep't, *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy & Practice* (1999) (recommendation by twenty-two states that "child protection services should avoid strategies that blame a non-abusive parent for the violence committed by others"). Ignoring Sarah Greene's ability to consent to the search in this case merely because of the suspected violence of her husband resurrects this outdated and unjust prejudice, an analysis that this Court should swiftly reject. *See, e.g.*, NASW Br. at 15 n.3 (Drawing parallel between non-abusive parents like Sarah Greene and "An abused mother [who] may thus avoid an investigation into the father's abuse of their child because she fears incurring the father's wrath herself, or because she wishes to hide or deny the fact that she too has been abused"). Both parents and children are harmed by such blame-shifting. *See* Olive Stevenson, *Foreword* to *Child Abuse & Child Abusers: Protection and Prevention, Research Highlights in Social Work* 24 (Lorraine Waterhouse ed., 1993) (imputation of blame to non-abusing parents causes rifts between parents and children, and between children and social workers).

In truth, it is a parent who is usually the advocate who cares most about investigating a claim that her child has been sexually abused, and the person who is most likely to report potential abuse.

See Jan Breckenridge and Eileen Baldry, *Workers Dealing with Mother Blame in Child Sexual Assault Cases*, 6 J. of Child Sexual Abuse 65, 69 (1997) (one study found that 75% of mothers were responsible for the official notification of incest after the child's disclosure) (*citing* E. Mulligan, Mothers of Sexually Abused Children: Their role in discovery and disclosure of child sexual abuse (Southern Women's Health and Community Centre South Australia 1986)); Betty Joyce Carter, *Who's to Blame?: Child Sexual Abuse and Non-Offending Mothers* (1999) (In a study of child sexual abuse cases, the majority of cases were reported to the state by the child's mother, and "[m]others responded supportively to their children's disclosures in spite of the stress when the offender was either a partner or someone closely connected with the family"). For good reason, then, "there is a presumption that fit parents act in the best interests of their children." *Troxel v. Granville*, 530 U.S. at 67; *see also Safford v. Redding*, 557 U.S. ___, 129 S. Ct. at 2643 ("Parents are known to overreact to protect their children from danger. . . .").

3. Many States Already Require Judicial Review Before Children Who Are Suspected Victims Of Sexual Abuse Are Seized Without Parental Consent Or Evidence Of Exigent Circumstances.

Neither Petitioners nor their amici point to any evidence that the many states already obliged to secure parental consent or judicial authorization before seizing a child thought to be the victim of

abuse have fared any worse in protecting children, nor have they suggested any reported problems associated with fidelity to the Fourth Amendment in this context. *See, e.g., Calabretta v. Floyd*, 189 F.3d 808, 813-14 (9th Cir. 1999) (requiring warrant before social worker may seize a child at home who is a suspected victim of abuse); *Tenenbaum v. Williams*, 193 F.3d 581 (2d Cir. 1999) (absent parental consent, judicial order or evidence of an emergency, child welfare caseworkers may not seize a child at school when they suspect abuse); *supra* at 20-21. To the contrary, as these states' experience has shown, children can be effectively protected while requiring child welfare caseworkers to obtain advance judicial approval of nonconsensual, nonemergency searches and seizures.

Given the significant privacy interests at stake when state officials seek to conduct interviews like S.G.'s, in the absence of an emergency, state officials must secure permission from a judge before conducting the interview. They may, if they choose, request parental permission or they may seek judicial authorization. But they may not, consistent with the plain meaning of the Fourth Amendment and the important values it represents, decide for themselves to undertake the momentous invasion of privacy that is involved in conducting the interview.

CONCLUSION

The privacy and liberty interests at stake in this case are significant. Our society has long recognized as fundamental a family's expectation that parents will determine how and when intimate sexual topics

are discussed with young children. Before intruding on such privacy interests, the Constitution requires that child welfare caseworkers and police either seek the consent of a parent who is not suspected of sexually abusing the child, or obtain the imprimatur of an independent and neutral magistrate. Absent parental consent, only a judge can weigh the complex and important legal interests at stake. Otherwise, child welfare caseworkers will be free to conduct an unlimited number of intrusive and damaging sexual interrogations of young children.

Sexual abuse of children is a tragic and devastating crime that must be stopped. But a state does not serve that laudable goal by ignoring the constitutional rights of children and families, or by inflicting lasting harm on young children through poorly executed or unnecessary interrogations. The Ninth Circuit recognized as much, and its decision below should, accordingly, be affirmed.

Respectfully submitted,

MARTIN GUGGENHEIM
CHRISTINE GOTTLIEB
NEW YORK UNIVERSITY
SCHOOL OF LAW
FAMILY DEFENSE CLINIC
245 Sullivan St.
New York, NY 10012
Telephone: (212) 998-6460
Email: guggenh@exchange.law.nyu.edu

CHARLES L. KERR
Counsel of Record
MARK DAVID MCPHERSON
ADAM JACKSON HEINTZ
HEIDI JOHANNS
MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, NY 10104
Telephone: (212) 468-8000
Email: ckerr@mofo.com

Counsel for Amici Curiae

SUSAN JACOBS
CENTER FOR FAMILY
REPRESENTATION, INC.
116 John St.
19th Floor
New York, NY 10038
Telephone: (212) 691-0950
Email: sjacobs@cfrny.org

LAUREN SHAPIRO
BROOKLYN FAMILY
DEFENSE PROJECT
177 Livingston St.
7th Floor
Brooklyn, NY 11201
Telephone: (347) 592-2500
Email:
lshapiro@bfdp.ls-nyc.org

JANE M. SPINAK
COLUMBIA LAW SCHOOL
CHILD ADVOCACY CLINIC
Rm. 205, William Warren Hall
410 W. 116th St.
New York, NY 10027
Telephone: (212) 854-3857
Email:
spinak@law.columbia.edu

KARA FINCK
THE BRONX DEFENDERS
860 Courtlandt Ave.
Bronx, NY 10451
Telephone: (718) 838-7839
Email:
karaf@bronxdefenders.org

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